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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,955	02/20/2002	Robert Swift	3728-0103P	3035

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EXAMINER

CHIN, PAUL T

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/077,955

Applicant(s)

SWIFT ET AL.

Examiner

PAUL T. CHIN

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 February 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: “60” (remote control). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 15 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis for “*the hydraulic motor*” (claim 15, line 1) or “*the hydraulic device*” (claim 20, line 1). It is pointed out that “the hydraulic motor” and “the hydraulic device” are only recited in the preamble of claim 13. Moreover, the exact meaning of the phrase “the hydraulic device is a bottom dumping container” is vague and indefinite. It is not clearly understood as to whether the “device” is “hydraulic dumpster” or the “hydraulic device” is attached to the bottom of the dumpster as shown in figure 5.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3652

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3,6-10,13-15, and 17-19, as best understood, are rejected under 35

U.S.C. 102(b) as being anticipated by Fathauer (3,858,728).

Re claims 1,3,6-8,10,13-15, and 17, Fathauer (3,858,728) discloses a radio controlled hydraulic device for use when suspended from a crane, comprising a body portion (13) for suspending from the crane; a hydraulic cylinder (33) for holding hydraulic fluid; at least a first member (12) connected to the body portion; a hydraulic pump (53) connected to the cylinder for pumping; a power source (64); a controller having a receiver (66) for receiving a control signal; a wireless transmitter (83) for remotely transmitting the signal to the receiver; a switch (Fig. 8) (Col 6, lines 1-17); a valve (41-43) for controlling the direction of the flow of the fluid; and a driving device, an electric motor (60), for driving the hydraulic pump.

Re claims 2,9, and 19, Fathauer's device (3,858,728) further shows an enclosure (14) (see Figs. 2-4) containing the pump, controller, and power source, and a mount having a planar portion with two rails (19,19) (see Fig. 3) extending away from the enclosure.

Re claim 18, Fathauer's device (3,858,728) further shows that the electrical power source is a 12 volt batter (64) (Col 4, lines 33-39).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 3652

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4,5,11,12,16, and 20, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Fathauer (3,858,728) in view of the prior art (see figure 1), provided by applicant.

Re claims 4,12,16, and 20, Fathauer's device (3,858,728), as presented in section 5 above, shows the remote controlled hydraulic device having a hydraulic cylinder (33) causing the movement of arms (12) to grip a container (13). Fathauer's device (3,858,728) does not show that the hydraulic device is applied in combination with a hydraulic dumpster and the first member is a door to the dumpster.

The prior art, provided by applicant, shows in figure 1 that a hydraulic dumpster having a hydraulic cylinder (19,19) causing to open or close the pivotal doors.

Accordingly, it would have been an obvious to one of the ordinary skill in the art to provide the remote controlled hydraulic system of the Fathauer's device (3,858,728) as taught by the prior art in order to provide electric power to the hydraulic cylinders (19,19) of the prior art to open and close the pivotal doors of the dumpster without any requirement to connect cables or wires to the crane.

Re claims 5 and 11, the modified Fathauer's device (3,858,728) does not show that the enclosure is *made of metal*. However, it would have been an obvious to one of the ordinary skill in the art to provide a material, made of metal (such as aluminum), on the enclosure of Fathauer's device (3,858,728) to employ a reliable and strong enclosure to contain the pump, motor, valve, and power source.

Art Unit: 3652

*Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pomerville et al. (5,580,113) show a remote control crane.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (703) 305-1524. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (703) 308-3248. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-1113.



PAUL T. CHIN  
Examiner  
Art Unit 3652

PTC  
September 23, 2003